

Application Number 10/620,327
Art Unit 3727

REMARKS

This response is filed to place the above-referenced case in condition for immediate allowance. Applicant has amended claims 1 and 5, and canceled claims 3 and 4. Specifically,
5 Claim 1 has been amended to incorporate the novel features of the invention, which were originally claimed in dependent claims 3 and 4. Antecedent basis for the amendment to Claim 1 is found in the Specification, Page 11, lines 2-4. Because claims 3 and 4 have been essentially merged into Claim 1, claims 3 and 4 were
10 canceled. Claim 5 has been amended to be dependent on Claim 2, instead of Claim 4, which was canceled. No new matter has been added. Reexamination and reconsideration of the application, as amended, are requested.

15 Response to §102(b) Rejection Based Upon Nelson

The Examiner has rejected claims 1-11 under 35 U.S.C. §102(b) as being anticipated by Nelson (U.S. Patent No. 5,115,934). The Examiner has stated,

20 "Nelson discloses, in figs. 8, 9, and 11, a tamper resistant lid comprising a lid having a peripheral skirt 48 forming an annulus 44; a tear strip 34 secured to a peripheral edge of the skirt by a thin section forming a hinge 36, the tear strip having a

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plurality of tabs 50; one or more spurs 58 of each tab constructed to fold beneath a flange around a rim of a container; the spurs having a latch mechanism 69 having step edge for securely retaining the tear strip 5 on the lid. The lid further comprising a plurality of slots 52, and the tabs are curved to abut and engage an outer surface of the container (see fig. 8)."

35 U.S.C. § 102(b) states that "[a] person shall be 10 entitled to a patent unless - (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States." In applying § 102(b), MPEP § 706.02(a) instructs, "for 15 anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." MPEP §706.02(a) (page 700-21).

20 The applicant respectfully traverses the § 102(b) rejection based upon Nelson because the reference does not teach every aspect of applicant's claimed invention as amended.

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Specifically, the reference does not teach 1) a lid having a plurality of equally spaced slots around the skirt of the lid; 2) a resistant tear strip being hinged on the lid to fold upward; 3) spurs on the tear strip being constructed and 5 arranged to engage the slots in the skirt of the lid. Accordingly, as *Nelson* does not teach these features of amended claim 1, and since claims 4-11 are dependent on claim 1, Applicant respectfully traverses the 102(b) rejection.

10 A critical aspect of Applicant's invention, as amended, is that the resistant tear strip hinges up instead of down, and that the spurs are constructed on the tear strip in such a way as to engage the slots formed in the lid. Specifically, the spurs on the tear strip protrude through the slots in the 15 sidewall of the lid. Such a disclosure is not present in *Nelson*.

20 *Nelson* teaches a tear strip and lid skirt designed in such a way as to require the tear strip to be hinged down, instead of up. Furthermore, the lid in *Nelson* does not have any slots for the spurs to protrude through. Instead, the spurs in *Nelson* have to be pressed down under the lid skirt. In order to hold the tear strip in position, the tear strip is heated, causing thin film links between the tabs on the tear strip to contract

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until the tear strip is bound in a folded position beneath the rim of the lid.

Applicant, on the other hand, has the resistant tear strip hinge up, with spurs on the tear strip protruding through the slots in the lid sidewall. Applicant also does not use heat links between tabs on the tear strip. Because the tamper resistant tear strip is locked into place and protected with small bumps or steps forming latches and its reverse action keeps it in place, there is no need for the use of heat shrinkable links. Specifically, each spurs of the tear strip is provided with a stepped surface, and when an attempt is made to remove the tear strip or pry it from the cup, the bumps or hooks on the stepped up surface are pulled up tighter into the lid sidewall.

Applicant's invention is far removed from that which Nelson teaches. Further, Applicant discloses Nelson in the specification and demonstrates the disadvantage of a tamper resistant lid as in Nelson as being that the tear strip is required to be held down, and that the use of the heat links makes the manufacturing of the lid more complex and requires a heating unit to be used in the lid mounting or capping machine. Thus, Applicant's invention is a considerable improvement over Nelson.

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Accordingly, since Nelson does not disclose the elements as claimed in the amended claims, Examiner's 102(b) rejection is not applicable.

5 Conclusion

The Examiner is respectfully requested to reconsider his position in view of the amendments and remarks made herein and the distinctions now set forth. It is now believed that this 10 application has been placed in condition for allowance, and such action is respectfully requested.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of 15 the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at (310) 777-8399.

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Respectfully submitted,

Trojan Law Offices
By:



David Kogan
Reg. No. 50,868

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